

2003

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Recommended Citation

Jeanne L. Schroeder, *Can Lawyers Be Cured?: Eternal Recurrence and the Lacanian Death Drive*, 24 Cardozo Law Review 925 (2003).
Available at: <https://larc.cardozo.yu.edu/faculty-articles/176>

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CAN LAWYERS BE CURED?: ETERNAL RECURRENCE AND THE LACANIAN DEATH DRIVE

Jeanne L. Schroeder*

Perhaps Nietzsche's strangest idea is "eternal recurrence." Indeed, it is so strange that, despite its centrality in his works,¹ some of Nietzsche's modern interpreters—most notably Alexander Nehamas²—distance themselves from a literal interpretation of the doctrine. Rather than a cosmology, it becomes a mere thought experiment. This may be necessary if one wants to defend Nietzscheanism as a single coherent philosophy.³ It does, however, fly in the face of much of Nietzsche's language.⁴

I, here, venture no opinion as to the empirical Nietzsche's actual belief in the scientific or epistemological status of eternal recurrence. I merely offer some thoughts based on Lacanian psychoanalysis on both the concept of eternal recurrence as well as the reactions of modern day Nietzscheans toward it. I suggest, among other things, that eternal recurrence looks forward to Lacan's concept of drive: the abandonment of desire, understood as the pursuit of a teleological goal, in favor of circular, iterative activity. Surprisingly, in psychoanalysis "drive" brings cure—relief from the unbearable pressures of desire. Does this suggest why

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¹ For example, Zarathustra is called "*the teacher of the eternal recurrence.*" FRIEDRICH NIETZSCHE, *THUS SPOKE ZARATHUSTRA* 220 (Walter Kaufmann trans., 1995) [hereinafter NIETZSCHE, *ZARATHUSTRA*]. He sings how he lusts after his bride, "eternity and after the nuptial ring of rings, the ring of recurrence[.]" *Id.* at 229.

² See *infra* text at notes 18, 19.

³ See *infra* text at notes 18, 19.

⁴ Consequently, Schacht admits: "I would argue that several of his presuppositions are in fact questionable at best, and that his reasoning is fallacious. I would only contend that these passages clearly show him to have been convinced of the truth of the doctrine of eternal recurrence and of its demonstrability. . . ." RICHARD SCHACHT, *MAKING SENSE OF NIETZSCHE* 45 (1995).

eternal recurrence held so much fascination for a man locked in a losing battle with psychosis? From this I ask whether the concept of eternal recurrence has any relevance to the practice of law. Can lawyers be cured?

This paper proceeds as follows. I start with accounts of eternal recurrence and the case for treating it as a thought experiment, or theory of human nature, as opposed to a cosmology, or theory of nature. I then suggest a few interpretations of eternal recurrence drawn from Lacanian theory. First, one simplistic interpretation is that the theory of eternal recurrence is an example of the masculine sexuated position—an attempt to deny the split or negativity that constitutes subjectivity that Nietzsche recognizes elsewhere in his work. Second, the presumption adopted by some Nietzscheans—that one can both claim to reject a literal interpretation of eternal recurrence while simultaneously using it “as though it might be true” for certain purposes—reflects the psychoanalytic strategy known the “fetishist split.” Third, I offer a more sophisticated interpretation of eternal recurrence, comparing it to Lacan’s concept of “drive.”

In the final section I turn to an analysis of legal practice based on Lacanian discourse theory. I ask whether an attorney can cure herself from the unhappiness and resentment caused by desire by adopting a theory of eternal recurrence and still engage in the practice of law.

I. ETERNAL RECURRENCE

A. *Truth or Consequences*

Eternal recurrence is the idea that every event in the universe necessarily repeats itself exactly an infinite number of times. With respect to individuals, this means that our life has already occurred and will recur exactly the same way, without deviance, over and over and over.

Nietzsche’s most vivid description of eternal recurrence appears in *The Gay Science*. In *The Gay Science*, Nietzsche explains that:

What, if some day or night a demon were to steal after you into your loneliest loneliness and say to you: “This life as you now live it and have lived it, you will have to live once more and innumerable times more; and there will be nothing new in it, but every pain and every joy and every thought and sigh and everything unutterably small or great in your life will have to

return to you, all in the same succession and sequence—even this spider and this moonlight between the trees, and even this moment and I myself. The eternal hourglass of existence is turned upside down again and again, and you with it, speck of dust!”

Would you not throw yourself down and gnash your teeth and curse the demon who spoke thus? Or have you once experienced a tremendous moment when you would have answered him: “You are a god and never have I heard anything more divine.” If this thought gained possession of you, it would change you as you are or perhaps crush you. The question in each and every thing, “Do you desire this once more and innumerable times more?” would lie upon your actions as the greatest weight. Or how well disposed would you have to become to yourself and to life *to crave nothing more fervently* than this ultimate eternal confirmation and seal?⁵

Nietzsche later presents a strikingly similar account (down to the reference to the moonlight and spider) in *Thus Spoke Zarathustra*. In notes posthumously published in *The Will to Power*, Nietzsche calls eternal recurrence “the most *scientific* of all possible hypotheses.”⁶ He relates the idea of cyclical time as far back as at least Heraclitus.⁷ It is Zarathustra’s “most abysmal thought.”⁸ *The Will to Power* contains a “proof” or the necessarily literal truth of the theory:

If the world may be thought of as a certain definite quantity of force and as a certain definite number of centers of force—and every other representation remains indefinite and therefore useless—it follows that, in the great dice game of existence, it must pass through a calculable number of combinations. In infinite time, every possible combination would at some time or another be realized; more: it would be realized an infinite number of times. And since between every combination and its next recurrence all other possible combinations would have to take place, and each of these combinations conditions the entire sequence of combinations in the same series, a circular movement of absolutely identical series is thus demonstrated: the world as a circular movement that has already repeated itself infinitely often and plays its

⁵ FRIEDRICH NIETZSCHE, *THE GAY SCIENCE* 273-74 (Walter Kaufmann trans., 1974) [hereinafter NIETZSCHE, *GAY SCIENCE*].

⁶ FRIEDRICH NIETZSCHE, *THE WILL TO POWER* 36 (Walter Kaufmann & R.J. Hollingdale trans., 1967) [hereinafter NIETZSCHE, *WILL TO POWER*].

⁷ RICHARD SCHACHT, NIETZSCHE 254-55 (1985). In his early lectures on the pre-Platonic philosophers delivered when he was a young philology professor, he attributes cyclical cosmology even earlier to Anaximander. FRIEDRICH NIETZSCHE, *THE PRE-PLATONIC PHILOSOPHERS* 37 (Greg Whitlock trans., 2001) [hereinafter NIETZSCHE, *THE PRE-PLATONICS*].

⁸ NIETZSCHE, *ZARATHUSTRA*, *supra* note 1, at 216.

game *in infinitum*.⁹

Nietzsche states that eternal recurrence necessarily follows from the theories of eternal time and the conservation of energy and matter.¹⁰ That is, if time is infinite but the physical world is finite, then there will be a limited number of combinations of the physical world that must repeat endlessly.

Some Nietzscheans accept the proposition that Nietzsche must have believed in the probability, if not the necessity, of the literal truth of eternal recurrence on the grounds that it is hard to understand Nietzsche's excitement about the concept if he hadn't. For example, Arthur Danto states that:

I have quoted this at length to show unequivocally that Nietzsche really was saying, not that similar things go on happening, not that there are always similar instances falling under the same law, not anything which ordinary common sense might suppose him to have meant: he meant that the very same things keep coming back again and again, *themselves* and not mere simulacra of themselves. He felt this to have been his most important teaching He was, according to Lou Salomé, reluctant to disclose it to the world until he could find the scientific confirmation he thought it must have if it was to be accepted.¹¹

Indeed, "[a]t one point [Nietzsche] even considered resuming student life, to study the natural sciences in order to find more support for a doctrine he believed to be of the utmost importance."¹² Schacht argues that Nehamas' dismissal of Nietzsche's belief in eternal recurrence is inconsistent with his writings.

At times, to be sure, [Nietzsche] seems less concerned with the truth of the doctrine than with the cultivation of an affirmative attitude toward life so great that one not only could *endure* the thought of an eternal recurrence . . . but moreover could *desire* such a recurrence

At other times, however, that with which Nietzsche is concerned is the demonstration of the *truth* of the proposition After all, there is nothing self-contradictory in both maintaining the truth of a doctrine and desiring that people should have an attitude toward life so positive that they can embrace it gladly. . . .

That Nietzsche does hold this doctrine to be true is clear.¹³

Unfortunately, the problems with eternal recurrence as a

⁹ NIETZSCHE, WILL TO POWER, *supra* note 6, at 549.

¹⁰ "The law of the conservation of energy demands *eternal recurrence*." *Id.* at 547.

¹¹ ARTHUR C. DANTO, NIETZSCHE AS PHILOSOPHER 203 (1965).

¹² *Id.* at 204.

¹³ SCHACHT, *supra* note 4, at 44.

cosmology are obvious. The two underlying axioms—that time is infinite but the physical world finite—are themselves controversial.¹⁴ Even if one accepts these axiom *arguendo*, it can easily be shown that Nietzsche's conclusion that the same combinations must eventually and necessarily repeat an infinite number of times is false.¹⁵ If the theory cannot be proved logically, it is equally impossible to imagine how the theory as a cosmology could ever be empirically proven, or for that matter, disproved.¹⁶ A defense of a Nietzscheanism that requires the acceptance of the literal truth of eternal recurrence is, therefore, doomed from the beginning. If the literal truth of eternal recurrence is necessary to Nietzsche's project, then it devolves to a religion that can only be accepted on faith. Consequently, some Nietzscheans have tried to show either that Nietzsche himself did not literally believe that eternal recurrence was necessary, or that his theory does not require such a literal belief.¹⁷ Perhaps it is sufficient if one merely accepts eternal recurrence as a possibility, not a necessity. Or, perhaps, it should be thought of as purely a thought experiment.

For example, Nehamas points out that Nietzsche's only attempt at a cosmological or scientific defense of eternal recurrence as literal fact appears in notes published posthumously in *The Will to Power*. Nehamas argues that one should

¹⁴ For Kant, subjectivity itself is the birth of time and space—the conditions of possible experience. IMMANUEL KANT, *CRITIQUE OF PRACTICAL REASON* 28-33 (T.K. Abbott trans., 1996). Modern physics suggests that both time and the physical universe, as we understand them, both came into being with the Big Bang. Some early theories of the Big Bang suggested that the expansion we are undergoing will eventually come to an end and that gravity will reverse the process until the universe collapses in a Big Crunch. This might suggest some form of cosmic eternal recurrence as the universe itself repeatedly explodes and implodes over eternity—although it does not follow from this that each of us will relive our individual lives. More recent observations and theories suggest, however, that an eventual Big Crunch is unlikely.

¹⁵ Since at least Georg Simmel's refutation (GEORG SIMMEL, *SCHOPENHAUER UND NIETZSCHE* 250-01 (1907), cited in SCHACHT, *supra* note 7, at 263-64), it has been obvious that the conclusion that Nietzsche believes necessarily follows from his axioms is in fact not logically required. It is a mathematical truism that an infinite series of a finite set need not result in a repeating pattern. The ratio π is a familiar example. See also Danto's attempt to describe Nietzsche's proposed "scientific" proof of eternal recurrence. DANTO, *supra* note 11, at 206-09.

¹⁶

There can hardly be anything like *evidence* for the doctrine in any simple sense of "evidence." We could not, for example, find in the world as it now is any *traces* of another and exactly resemblant world or world state. If they do *exactly* resemble each other, there would be no traces or scars left by one upon the other to differentiate them . . .

DANTO, *supra* note 11, at 204.

¹⁷ "The Eternal Recurrence of the same remains a vision for him, but also an enigma. It can be neither verified nor refuted logically or empirically." Martin Heidegger, *Who is Nietzsche's Zarathustra*, in *THE NEW NIETZSCHE: CONTEMPORARY STYLES OF INTERPRETATION* 64, 75 (David B. Allison ed., 1985).

concentrate on what Nietzsche said in his published writings about eternal recurrence, which concentrate on the moral implications of the theoretical possibility, not the actuality, of eternal recurrence. In Nehamas's opinion, in the published works "eternal recurrence is not a theory of the world but a view of the self."¹⁸ The statements published in *The Will to Power* are, at most, evidence that Nietzsche explored whether eternal recurrence might be literally true, not that he ever decided that it was, or, more importantly, that anything in his moral theory requires its literal truth.¹⁹

B. *Eternal Recurrence and the Rejection of Teleology*

Under any interpretation, Nietzsche's idea of eternal recurrence is part and parcel of his fundamental rejection of the Christian and liberal teleological view of the universe or society. As Nietzsche says, "[l]et us think this thought in its most terrible form: existence as it is, without meaning or aim, yet recurring inevitably without any finale of nothingness: 'the eternal recurrence.' This is the most extreme form of nihilism: the nothing (the 'meaningless') eternally!"²⁰

Nietzsche's question for moral theory is how can one face, let alone live, one's life if God is dead and the universe serves no purpose? The doctrine, or perhaps metaphor, of eternal recurrence is developed as a means of exploring this problem. In Karl Löwith's words:

The metaphor of the eternal recurrence is therefore equatable with something twofold: on the one hand, with an "ethical gravity" by means of which human existence that has become goalless obtains a goal again, beyond itself; and on the other hand, with a natural-scientific "fact" in the goalless self-contained existence of the world of forces. . . . This double explicability as an *atheistic religion* and as a *physical*

¹⁸ ALEXANDER NEHAMAS, *NIETZSCHE: LIFE AS LITERATURE* 150 (1985) (citation omitted).

¹⁹ "Nietzsche does not at all set out to prove that the Return is actually inscribed in the course of things; he rather introduces a simple fiction or a hypothesis, like a free play of the imagination, that comes out in the form of a question . . ." Michel Haar, *Nietzsche and Metaphysical Language*, in *THE NEW NIETZSCHE: CONTEMPORARY STYLES OF INTERPRETATION* 5, 29 (David B. Allison ed., 1985).

²⁰ NIETZSCHE, *WILL TO POWER*, *supra* note 6, at 35-36. In Karl Löwith's words, "The 'goal' of the earth, however, is 'the goallessness as such' of its revolving, just as the goal of the last metamorphosis is freedom from all goals and purposes, from every for-the-sake-of." KARL LÖWITH, *NIETZSCHE'S PHILOSOPHY OF THE ETERNAL RECURRENCE OF THE SAME* 57 (J. Harvey Lomax trans., 1997).

metaphysics shows that in its totality the teaching is the *unity of a conflict* between the *nihilistic* existence of the man who has rid himself of God and the *positivistic* presence of physical energy.²¹

Nietzsche invites us to consider eternal recurrence as the most extreme form of a goalless universe. Even if one accepts that there are no external teleology and one must create one's own individualistic goals, in the cyclical universe even subjective achievements are destined to pass away.

Nietzsche's interest in cyclical time springs from his studies of the pre-Platonic philosophers as a young philology professor.²² In this classical approach, events recur at the macro, if not the micro level. The world as a whole comes and goes. The seasons eternally recur with Winter leading to Spring to Summer to Fall and back to Winter. Nations come into existence, flourish, and fall. People are born, become consumed in their petty loves and hatreds, and die. In this view, the world eternally repeats itself in general even though no individual year, nation or person is repeated exactly. The salient point about classical cyclicity is that it does not see the world progressing towards a teleological goal. Nehamas argues that some of Nietzsche's writings indicate that he was proposing only this broad concept of eternal recurrence. "[Nietzsche] is interested only in the realization that the world will continue to be more or less as it has always been so long as it exists, that no final state will redeem those who have gone before . . . eternal recurrence is 'scientific' in that it is strictly nonteleological"²³ Although this may be one aspect of Nietzsche's fascination with eternal recurrence, in my opinion it does not encompass the entire theory. Nietzsche's moral theory requires that we also consider the possibility that the world eternally recurs at the micro level of each individual.²⁴

²¹ LÖWITH, *supra* note 20, at 83.

²² See *supra* note 7.

²³ NEHAMAS, *supra* note 18, at 145. This idea with respect to societies may have seemed more persuasive prior to the unprecedented advances in science and technology in the modern and post-modern eras.

²⁴ The distinction between a cyclical and teleological or progressive view of history can be seen by comparing Christian and pagan interpretation of the miracle of resurrection. When I was growing up, every Easter my well-meaning post-Vatican II parish priest would compare the resurrection of Christ with the rebirth of vegetation in the Spring. Of course, it is both a historical fact and a banal commonplace, that early Christianity incorporated into its Easter rites imagery taken from classical mystery religions which imagined that the corn god—whether known as Osiris, Adonis, Zagreus, or whoever—was reborn every Spring. This simplistic truism, however, represses the radical difference between Christianity and paganism. To the pagan, Osiris and his brothers personified the vegetal life that dies and is reborn in a repeating eternal atemporality. In contrast, Christ's resurrection is crucial precisely because it was unique. The Christian believes that Christ was a historical individual who actually died and was reborn once and only once on a

Nietzsche, the former philologist, is fascinated with the classical world and his ideas are clearly influenced by his study of the pre-Platonics, but in no way is he a classical pagan. The ancients lived in an enchanted world in which cyclicalality was imbued with spirit.²⁵ Christianity rejected circularity in favor of teleology, but retained the insistence of spirit in the world. When the ostensibly Christian enlightenment reinterpreted Christian teleology in terms of scientific and intellectual progress it, in fact, eliminated the need for a belief in the Christian God. When Nietzsche rejected teleology, he was following enlightenment science to its logical extreme in declaring that God was now dead. Consequently, although he returned to the ancient idea of cyclicalality, he could not adopt its original form. Rather, he had to reconsider what cyclicalality could mean in light of the moral problems posed by modernity.²⁶

C. *Eternity v. Universality*

What could morality be without either progress or spirit to guide us? Without God or purpose, Nietzsche must reject Kant's definition of morality as universality. Consequently, Nietzsche's famous denunciation of "morality" necessarily follows from his murder of God and denial of teleology.²⁷

Of course, this necessary denunciation of "morality" is, in fact, only a denunciation of the Christian and Kantian

specific date, in order to redeem us from the past historical reality of Original Sin in order to save us at the future historical event of the Last Judgment.

²⁵ That Nietzsche clearly recognizes this can be seen in his theory of the Apollonian and Dionysian principles set forth in *The Birth of Tragedy*. His third lecture on the pre-Platonic philosophers necessarily consists of a consideration of the mythological cosmology that was the background in which these philosophers were working. NIETZSCHE, *THE PRE-PLATONICS*, *supra* note 7, at 10.

²⁶

Because of the changed historical situation, however, the age-old idea of the eternal recurrence does not arise again unchanged, but instead is calamitously modernized. . . . The will to power is equally *un-Greek*: the will to power (as a will to something) wills the future, and is opposed to the eternal cycle of coming into being and passing away apart from will and purpose.

LÖWTH, *supra* note 20, at 120.

²⁷

But the paradox of both contentions loses its offensiveness as soon as one understands that a teaching about man is groundless if it does not have a supporting basis either a metaphysical *God* or the *physis* of the world; for man does not exist through his own powers. And because for Nietzsche the transworldly God was dead, he had to ask anew the old cosmological question about the eternity of the world, as opposed to its single creation.

Id. at 187.

understanding of that term. In fact, the moral question, "how do I live my life?" is a central thread running through Nietzsche's thought. Nietzsche's denial of "morality" is, therefore, a deeply moral act. It is the first step in the attempted creation of a new understanding of morality.

In order to answer this basic moral question, it is not sufficient to leave eternal recurrence at the macro-universal level, as Nehamas suggests. Nietzsche finds it necessary to at least consider the possibility that eternal recurrence operates at the micro-individual level. Nietzsche's answer to Kantian morality is to create a paradoxical *individualized* understanding of universality: eternal recurrence. The universality of Kantian morality cuts across human subjects. The categorical imperative is moral because it applies to all men.²⁸ Nietzsche, in effect, counters this with a moral law that applies not *universally* to *all* men, but *eternally* to *one* man.²⁹ If Kant's test of morality is "would I want this to apply *universally* to *all* men?" Nietzsche's test is "would I want this to apply *eternally* to *me*?" Consequently, Gilles Deleuze states that eternal recurrence, to Nietzsche "gives the will a rule as rigorous as the Kantian imperative. . . . As an ethical thought, the Eternal Return is a new formulation of the practical synthesis: *Whatever you will, will it in such a way that you also will its Eternal Return.*"³⁰

This aspect of eternal recurrence looks forward to Lacan's rewriting of concepts of universality and particularity associated with traditional moral theory.³¹ It is generally thought that there can be only one universal that might have numerous particular applications. As just stated, Kant famously formulates his

²⁸ "Act so that the maxim of thy will can always at the same time hold good as a principle of universal legislation." KANT, *supra* note 14, at 46. See also IMMANUEL KANT, *THE METAPHYSICS OF MORALS* 17 (Mary Gregor ed. & trans., 1996).

²⁹

In this anthropological interpretation, the eternally same recurrence appeared as an ethical task, renewing itself in every moment for the willing man for whom this teaching is to replace the Christian belief in immortality. In the cosmological interpretation, by contrast, the recurrence appeared not as a "plan for a new way to live" and a "will to rebirth" but as destruction and rebirth that happens by nature and that is completely indifferent to all plans made by man out of his thrownness.

LÖWITH, *supra* note 20, at 156-57.

³⁰ Gilles Deleuze, *Active and Reactive*, in *THE NEW NIETZSCHE: CONTEMPORARY STYLES OF INTERPRETATION* 80, 100 (David B. Allison ed., 1985). Similarly, Thomas J. J. Altizer calls the idea of eternal recurrence "Nietzsche's categorical imperative—the most awful and awesome that man has ever faced" Thomas J. J. Altizer, *Eternal Recurrence and Kingdom of God*, in *THE NEW NIETZSCHE: CONTEMPORARY STYLES OF INTERPRETATION* 232, 241 (David B. Allison ed., 1985).

³¹ SLAVOJ ŽIŽEK *THE INDIVISIBLE REMAINDER: AN ESSAY ON SCHELLING AND RELATED MATTERS* 217 (1996) [hereinafter ŽIŽEK, *THE INDIVISIBLE REMAINDER*].

categorical imperative as a test of whether a maxim can serve as a moral law. The moral is universal and universality is defined as that which applies to everyone in every situation. One of the moral dilemmas inherent in Kantianism, of course, is that every person and every situation is different and particular. How, then, can we ever know if our acts are a correct application of the universal to the particular—and therefore moral—or merely pathological and particular—and therefore immoral.³²

Lacan doesn't so much turn Kant on his head, as inside out: there is only one particular, but there are unlimited universals. The one particular is the constitutive split that creates any individual subject and any specific symbolic order. This split is a logical paradox that necessarily underlies all concepts. The specific manifestation of this split within any individual or society is universalized within individual or society, so that it affects every aspect of it. Lacan interprets this constituent split as the sexual impasse.

It is easy to misinterpret Lacan as being ethnocentric on the grounds that, although this constituent split might be sexual in modern Western society, it manifests itself in some other distinction or division within that society. But, according to Slavoj Žižek, that was precisely Lacan's point. The split is universal only *within* a person or society. Indeed, it is that very specificity that is universalized. In our society, this split is a specific sexual hierarchy whereby the masculine represents the universal (that is, mankind) and the feminine the exception (sexuality *per se*). This is universalized in our society throughout the structure of the symbolic order. It is not surprising, but predictable, that this split

³² Kant's answer, of course, is that we can never know whether we are acting morally (purely out of duty to the moral law) or out of pathology (i.e., subjective, particular). See, e.g., KANT, *supra* note 14, at 92; Jeanne L. Schroeder, *The Stumbling Block: Freedom, Rationality, and Legal Scholarship*, 44 WM. & MARY L. REV. 263 (2002) [hereinafter Schroeder, *The Stumbling Block*]; Jeanne L. Schroeder & David Gray Carlson, *Appearance of Wrong and the Essence of Right: Metaphor and Metonymy in Law*, 24 CARDOZO L. REV. (forthcoming Summer 2003). This means, on the one hand, every human act is always smeared with a primal, "radical evil." On the other hand, this lack of knowledge—the ability to choose to do wrong—is the source of man's freedom. According to Kant, if man could, like God, truly know the moral law, he would not become divine but a "marionette or an automaton." KANT, *supra* note 14, at 123. As I have said elsewhere:

If the self were noumenal, then God (a noumenon) would be our equal. God would stand before our eyes as directly perceivable. We would lose our freedom, if we could directly know God's law. We would be mere puppets in the thrall of the moral law. Ironically, morality would become legality, and morality would be thoroughly pathological—that is, natural.

Jeanne L. Schroeder & David Gray Carlson, *Kenneth Starr: Diabolically Evil?*, 88 CAL. L. REV. 653, 667 (2000) (citations omitted).

would be universalized in a different way in different societies and within different individuals.³³

Similarly, Nietzsche, who tries to reject the universal, finds one specific—the problem of eternal recurrence—which he locates at the level of individual subjectivity. It is specific because each man experiences it differently—each has his own unique pain, horror, and humiliation that he thinks he could not bear to repeat. Each subject must find a way to universalize the specificity of recurrence within his own life to establish a “moral” law that makes *his* life not merely bearable but triumphant.

D. *The Implications of Eternal Recurrence*

If one is to consider the moral law of a world with no goal, then one must try to imagine the most extreme view of a goalless world. According to Nietzsche, this would be a world in which nothing is unique, but everything recurs over and over again down to the most mundane detail. Such a world would not merely lack necessary, external, objective goals, but would also seem to rule out the possibility of creating contingent, internal, subjective goals because everything one might achieve is preordained to pass away. What would be the implications of this hypothesis?

1. Infinite Universals. As I suggested, one implication drawn by Nietzsche is that the traditional Kantian categorical imperative grounded on universality be replaced with a new Nietzschean categorical imperative grounded on eternity. One should no longer try to conform one's actions to an axiom that should apply to all men. Rather, one should try to live one's life so that one would be willing to repeat one's acts eternally. In Haar's words:

[T]he doctrine of the Return constitutes an ethical claim. We are to act at every instant as though each of our acts were destined to be repeated an infinite number of times in exactly the same way: in my own life I am to try to modify my relationship with the instant, to will each act just as intensely as though it were *not* destined to pass, but rather to remain eternally. I should will the idea that what I now do involves my eternal being. However, this ethic opposes in reality every categorical imperative (“I should”) and proposes in contrast an

³³ For example, Žižek repeats that some scholars have argued that the universality of the sexes was reversed in Ancient China so that woman represented the universal aspect of humanity and man the specific of sexuality. ŽIŽEK, *THE INDIVISIBLE REMAINDER*, *supra* note 31, at 217.

imperative of necessity ("I am constrained to").³⁴

Nietzsche presents the possibility of eternal recurrence as an initially horrifying possibility. One would have to relive all of the pains and humiliations in life, to re-witness all of its horrors, to know everything one despised again and again and again. One would have to face what it means to live in a world in which God is dead and the world is no longer enchanted: i.e., there is no external purpose or goal of life. In Kaufmann's words, "the notion that everything recurs eternally in identical fashion reduces life to 'a tale told by an idiot, full of sound and fury, signifying nothing.'"³⁵ Eternal recurrence would seem to be a recipe for suicide except for the fact that one would then have to face an eternity of suicide.

Consequently, stripped of external moral support, the superior man eventually realizes that the only meaning his life could have is the meaning he gives himself. As Danto puts it:

[i]n another respect the doctrine was encouraging as well, which was the obverse of the absence of any higher condition. There could be no lower condition, or no lowest condition that could be final. There would be no drying up, no dying away, no fatally disordered universe, eternally arrested in its abiding death.³⁶

He continues: "And, by parity, there is no meaning to the universe if it has no end. So man must give it one."³⁷

This cannot mean, however, that we should seek to achieve some goal. Since everything is destined to go under in the revolving cycle of destruction and creation, no goal can be truly achieved as all are doomed to eventual failure. Moreover, seeking to achieve a goal cannot satisfy Nietzsche, who believes that one is one's actions, not one's conscious subjective state of mind.

Once one comes to this realization, one should be able to stop brooding about the past and learn to embrace it.³⁸ This is because in order for one to accept one's life now, or to look forward to the future, one must also accept everything that has gone before. Consequently, in order to be able to say "yes!" to the triumphal movements of life, one must also be willing to say "yes!" to the

³⁴ Haar, *supra* note 19, at 31-32.

³⁵ Walter Kaufmann, *Translator's Notes to NIETZSCHE, GAY SCIENCE*, *supra* note 5, at 3, 18.

³⁶ DANTO, *supra* note 11, at 211.

³⁷ *Id.*

³⁸ "Nietzsche writes that instead of seeking revenge for a wrong, it is better to show that an enemy has done one some good. Instead of resenting a harm, it is better to use it as material for further development and so to prevent it from constituting a harm at all." NEHAMAS, *supra* note 18, at 161.

nauseating and banal ones, or, in Nietzsche's words, to "even this spider and this moonlight."³⁹ As Heidegger states:

Deliverance from revenge is the bridge from contempt for time, to the will that represents beings in the Eternal Recurrence of the same, in which the will becomes the advocate of the circle.

In other words: only when the Being of beings is represented to man as the Eternal Recurrence of the same, only then can man cross the bridge and, crossing over, be delivered from the spirit of revenge . . .⁴⁰

Ironically, if Nietzsche is the apostle of eternal recurrence, and if eternal recurrence is supposed to relieve resentment, then his enterprise would seem to be a failure. Was there ever a philosopher more trapped by resentment? His work, *Zarathustra* in particular, is filled with disgust of other people to the point of nausea.⁴¹ Indeed, according to Nietzsche, the horror that needs to be confronted before one can accept the idea of eternal recurrence is precisely the continued existence of these loathsome others. Nietzsche's very obsession with overcoming resentment is vivid testimony that he never succeeded in doing so.

2. Today on Oprah — Nietzsche! No doubt, these two implications are part of Nietzsche's point. But if this is all there is to Nietzsche, as Nehamas argues, then he is banal. Considering the possibility of eternal recurrence might be perfectly good prudential advice about how to live a healthy, satisfying life. But it would be hardly more profound than that doled out everyday on afternoon TV: Don't worry, be happy.

A Lacanian spin on Nietzsche—as well as on Nehamas' attempt to domesticate eternal recurrence—raises some more interesting issues. A simple reading of eternal recurrence reflects the "masculine" psychoanalytical position of subjectivity in which

³⁹ See *supra* quote at note 5.

⁴⁰ Heidegger, *supra* note 17, at 74.

⁴¹ See, e.g., NIETZSCHE, ZARATHUSTRA, *supra* note 1, at 219. Nietzsche stated that: 'Eternally recurs the man of whom you are weary, the small man'—thus yawned my sadness and dragged its feet and could not go to sleep. . . . '[a]las, man recurs eternally? The small man recurs eternally!' . . . And the eternal recurrence even of the smallest—that was my disgust with all existence. Alas! Nausea! Nausea! Nausea!

Id.

Perhaps the most disturbing image in *Zarathustra* is the prophet's surreal vision inspired by the thought of eternal recurrence. Zarathustra's nausea is personified as a man choking on a snake that has crawled into his mouth and sunk its teeth into his throat. He can free himself only through the even more nauseating act of biting off the snake's head. *Id.* at 159.

the subject tries to avoid the implications of the horror of castration by falsely claiming to have the phallus. The attempt by Nehamas (and perhaps Nietzsche himself) both to claim to reject a literal reading of eternal recurrence, while nevertheless living one's life as though it were true, can be seen as what Lacan called a fetishist split—the attempt to have one's cake and eat it, too. More interestingly, however, the development of eternal recurrence may be an attempt by Nietzsche to replace desire with drive. If so, it can be read as an intuitive attempt by the neurotic, and soon to be psychotic, Nietzsche to achieve a psychoanalytic “cure.” If so, this cure turned out to be unsuccessful for Nietzsche, personally. Can it be any more successful for attorneys?

II. NIETZSCHE ON THE COUCH

A. Background

Lacan famously ignores Nietzsche. In this paper I will ignore the interesting possibility that this might say something more about Lacan than about Nietzsche. In this section I introduce a simplified account of certain aspects of Lacanian theory.

Lacan posits that the subject is split.⁴² The subject is therefore represented by the matheme “ $\$$ ” (i.e., the matheme S, which stands for a signifier, bifurcated by a “bar”). This does not mean that the subjectivity once had a pre-existing affirmative content that was lost through trauma. Rather, it is the much more radical proposition that subjectivity is nothing but negativity or lack *per se*. Subjectivity only comes into being with the splitting of the personality; there can be no whole, unsplit subject. Consequently, the expression “the subject is split” is not equivalent to “the subject *has been* split” but rather “the subject *equals* the split.”⁴³ As we shall see, this is sometimes expressed in the intentionally misleading metaphor of castration.

⁴² I explain this phenomena at length elsewhere. See, e.g., JEANNE L. SCHROEDER, *THE TRIUMPH OF VENUS: THE EROTICS OF THE MARKET* (forthcoming 2003); JEANNE L. SCHROEDER, *THE VESTAL AND THE FASCES: HEGEL, LACAN, PROPERTY AND THE FEMININE* 87-94 (1998) [hereinafter SCHROEDER, *THE VESTAL AND THE FASCES*]; Jeanne L. Schroeder, *The Midas Touch: The Lethal Effects of Wealth Maximization*, 1999 WIS. L. REV. 687, 731-35; Jeanne L. Schroeder, *The End of the Market: A Psychoanalysis of Law and Economics*, 112 HARV. L. REV. 483, 505-06 (1998) [hereinafter Schroeder, *The End of the Market*]. The following is an abbreviated version of these more complete discussions.

⁴³ Schroeder, *The End of the Market*, *supra* note 42, at 501-02 n.58; see also BRUCE FINK, *THE LACANIAN SUBJECT: BETWEEN LANGUAGE AND JOUISSANCE* 45 (1995).

The adult split subject is located in the three psychic orders of the real, the imaginary and the symbolic.⁴⁴ Roughly, the symbolic is the social order of signification that includes such concepts of language, sexuality, and law. The imaginary, as the term suggests, is the order of imagery, picture thinking, and the simple forms of meaning of which animals are capable. The real is our intuition that there exists more to the world that can be contained in the symbolic and the imaginary—it is literally and figuratively that which cannot be described in words or pictures.

Just as it is tempting to imagine that the subject originally had an affirmative character and integrity that was subsequently rent, it is tempting to think, first, that there was a time when the three orders perfectly joined in a holistic unity and, second, that the real is the part of that original unity that remained after the symbolic and imaginary were split off. In fact, like the subject, each of the three orders—including the real—only came into being at the moment of their splitting apart.⁴⁵ Nothing pre-existed the split.

The social order of the symbolic, like the subject, is incomplete—in Lacan's famous formulation the Other (the symbolic) does not exist.⁴⁶ This is not the palpably silly assertion that the symbolic does not function.⁴⁷ Rather, it is the proposition

⁴⁴ See Jacqueline Rose, *Introduction II*, in JACQUES LACAN AND THE ÉCOLE FREUDIENNE, FEMININE SEXUALITY 27, 31 (Juliet Mitchell & Jacqueline Rose eds., Jacqueline Rose trans., 1985); JACQUES LACAN, THE SEMINAR OF JACQUES LACAN BOOK I: FREUD'S PAPERS ON TECHNIQUE 80 (J-A. Miller ed., J. Forrester trans., 1988) [hereinafter Rose, LACAN, SEMINAR I]; see also generally ELIZABETH GROSZ, JACQUES LACAN: A FEMINIST INTRODUCTION 10 (1990). As is the case with virtually all of Lacan's concepts, not only are three orders extremely complex, Lacan's thinking about them developed over time. For example, in the early seminars of the 1950s, Lacan concentrated more on the contrast between the symbolic and the imaginary, whereas his later seminars put more emphasis on the real. Indeed, it seems that over time, Lacan shifted some of the functions he originally assigned to the imaginary over to the real. I have explicated on the three orders and their implications for law and economics at great length elsewhere and shall not repeat that discussion here. I will merely reiterate a few crucial points.

⁴⁵ Although we experience it in this way, "the Real is not a hard external kernel which resists symbolization, but the *product* of a deadlock in the process of symbolization." ŽIŽEK, INDIVISIBLE REMAINDER, *supra* note 31, at 110.

⁴⁶ Jacques-Alain Miller, *Extimite*, in LACANIAN THEORY OF DISCOURSE: SUBJECT, STRUCTURE, AND SOCIETY 74, 81 (Mark Bracher et al. eds., 1994). This prefigured his even more infamous pronouncement that Woman does not exist. JACQUES LACAN, THE SEMINAR OF JACQUES LACAN: ON FEMININE SEXUALITY, THE LIMITS OF LOVE AND KNOWLEDGE: BOOK XX, ENCORE 1972-1973, at 72-74 (Jacques-Alain Miller ed., Bruce Fink trans., 1988) [hereinafter LACAN, SEMINAR XX]. "What has a body and does not exist? Answer—the big Other." JACQUES LACAN, THE SEMINAR OF JACQUES LACAN. BOOK XVII: THE OTHER SIDE OF PSYCHOANALYSIS (Jacques-Alain Miller ed. 1991) (unpublished translation of JACQUES LACAN, SEMINAIRE LIVRE XVII: L'ENVERS DE LA PSYCHANALYSE 74 (1991) [hereinafter LACAN, SEMINAR XVII] (on file with author).

⁴⁷ Lacan tries to capture the fact that the big Other functions despite the fact that it does not "exist" in his statement that it nevertheless has a "body." "If we believe in this

that the symbolic is not pre-existing, necessary, objective, complete, and permanent.⁴⁸ As an artificial human creation it is contingent, subjective (or, more accurately, intersubjective), open-ended, and in a constant state of flux. The symbolic order does not function externally to the subjects who are subjected to it. It only functions because, and insofar as, we act as though it exists.

Because the subject is split, she is characterized by desire. Indeed, subjectivity is nothing but desire understood as the impetus for the healing of the split, resulting in the completion of the subject and the collapse of the three orders back into a hypothetical primal unity. As Debra Bergoffen accurately states in her comparison of Nietzsche's and Lacan's notions of subjectivity, "[a]s desire, the human subject is the lack seeking to overcome itself as lack; the finitude seeking immortality; the limited in quest of the unlimited; the singular seeking the absolute."⁴⁹ Because the subject is nothing but its constituent split, desire is by definition always unsatisfied and unsatisfiable. If the subject ever were to achieve her desire and become complete, she would no longer be a subject. The most characteristic form of the desiring subject is the feminine position of hysteria⁵⁰ that I discuss in the last section of this paper.

Lacan's metaphor that the split subject is "castrated"⁵¹ reflects the mistaken way we try to explain our constituent split to ourselves. As I have said, it is easy to presume from the fact that the subject is split *now* that there might have been an earlier time when the subject was whole. Similarly with respect to desire, it is easy to presume that the reason why we feel lacking is that we lack *something*. The metaphor of castration reflects the fact that we feel that we once had that which made us whole but have lost it. In keeping with this metaphor, the hypothetical object lost in castration is called the "phallus." Of course none of this is literally

big Other, it has a body, ineliminable from the substance of he who has said *I am what I am*, which is another form of tautology altogether." *Id.*

⁴⁸ I discuss this concept at length in Schroeder, *The Stumbling Block*, *supra* note 32.

⁴⁹ Debra B. Bergoffen, *Nietzsche's Madman: Perspectivism Without Nihilism*, in *NIETZSCHE AS POSTMODERNIST: ESSAYS PRO AND CONTRA* 57, 58 (Clayton Koelb ed., 1990).

⁵⁰ "[T]he 'hysterical 'desire to desire', far from being a defective mode of desire, is, rather, its paradigmatic case, desire *tout court* . . ." ŽIŽEK, *INDIVISIBLE REMAINDER*, *supra* note 31, at 167. "A more than sufficient reason for maintaining the notion of hysteria is that *the status of the subject as such is ultimately hysterical*." *Id.* at 164.

⁵¹ Lacan insisted on the "universality of the process of castration as the unique path of access to desire and sexual normativisation . . ." JACQUES LACAN AND THE ÉCOLE FREUDIENNE, *FEMININE SEXUALITY* 118 (Juliet Mitchell & Jacqueline Rose eds., Jacqueline Rose trans., 1985).

I have called castration the "universal initiation rite of subjectivity." SCHROEDER, *THE VESTAL AND THE FASCES*, *supra* note 42, at 80.

true. Nevertheless, we cling to this idea because, if it were true, then it would explain our feeling of dislocation.⁵² Now we can consider Lacan's extremely complex notion of the *objet petit a* and contrast it to his notoriously confusing concept of the phallus.

The *objet petit a* is Lacan's term for the "object cause of desire."⁵³ I shall introduce only one aspect of this idea here. The fantasy of the *objet petit a* is an attempt to positivize one's lack by identifying it with a specific object that one imagines might have caused the lack that results in one's desire.⁵⁴ This *objet petit a* is an imaginary object that serves as a little piece of the real in the symbolic.⁵⁵ The object little a can be an object either of delight or disgust. On the one hand, the rift in ourselves and the social order could be explained by the absence of something wonderful. Wholeness could, therefore, be restored if this missing object were obtained. On the other hand, this rift could be explained by the presence of something terrible eating away at, or polluting us. Integrity could be restored, therefore, if the object were eliminated.

The problem is obvious. Both of these explanations of our desire are imaginary. Our desire is not really caused by the object little a, but is constituent of our subjectivity. This means that desire paradoxically precedes its imaginary "cause."⁵⁶ If we were ever to acquire or destroy any specific object serving as our little a,

⁵² In other words, castration is an "abduction."

⁵³ FINK, *supra* note 43, at 83-97.

⁵⁴ SCHROEDER, THE VESTAL AND THE FASCES, *supra* note 42, at 8. As explained by Žižek:

In this precise sense, a is the object-cause of desire: it does not effectively pre-exist desire as that which arouses it, it merely gives body to its inherent deadlock, to the fact that desire is never satisfied by any positive object; that is to say, apropos of every positive object, the subject's experience will always be a 'this is not that.'

ŽIŽEK, INDIVISIBLE REMAINDER, *supra* note 31, at 144.

⁵⁵ "It is Lacan who—in a Hegelian way—enables us to resolve . . . the "fallout," of the very process of symbolization. . . . What is stolen, betrayed . . . is always *objet petit a*, the little piece of the Real." SLAVOJ ŽIŽEK, THE ABYSS OF FREEDOM 27 (1997) [hereinafter ŽIŽEK, ABYSS].

⁵⁶ In the words of Žižek:

How are we to understand this strange reversal? In principle, things are clear enough: by way of positing itself as its own cause, the subject fully assumes the fact that the object-cause of its desire is not a cause that precedes its effects but is retroactively posited by the network of its effects: an event is never simply in itself traumatic, it only becomes a trauma retroactively, by being "secreted" from the subject's symbolic space as its inassimilable point of reference. In this precise sense, the subject "causes itself" by way of retroactively positing that X which acts as the object-cause of its desire. This loop is constitutive of the subject; that is, an entity that does not "cause itself" is precisely not a subject but an object.

Id. at 79.

we would remain as desirous as before and would have to change our fantasy. Consequently, we typically invent obstacles to stand between ourselves and our object little *a* purely for the purpose of keeping us from attaining it, thereby sustaining our desire.⁵⁷

We can now see the difference between the object little *a* which is the object *cause* of desire and Lacan's concept of the phallus which is the object *of* desire. The object little *a*, being imaginary, is an attempt to positivize our lack, to give it affirmative content. The phallus is symbolic and, like the subject and the symbolic order, is negativity *per se*—the phallus is thus nothing but the symbolization of lack, and therefore of subjectivity.

There is, nevertheless, a strong tendency to want to give positive status to the phallus. For example, as the metaphor so graphically illustrates, we conflate the phallus with the penis. This is, by definition, illusory. Insofar as the phallus stands for that which is missing, it also stands for that which would fill in the hole that is the lack. In this sense the phallus is "the lack of a lack"—what it would mean if our constituent lack were lacking. The grammatical logic of the double negative leads us to imagine that the lack of a lack must be something positive—in the sense that negative one multiplied by negative one equals positive one. But, this hypothesized *positive* object is not the phallus but the *objet petit a*—a fantasy.

The phallus cannot be analogized to negative one because the concept of negative one is not, in fact, *radically* negative—negative one has the positive characteristic of "quantity." Lacan has been ridiculed for saying that the phallus is *literally* (not metaphorically) the *square root* of negative one.⁵⁸ But it is precisely his point that the phallus is that which remains negative even when multiplied by itself.

⁵⁷ In other words, "the 'cause of desire' must be in itself a metonymy of lack—that is to say, an object which is not simply lacking but, in its very positivity, gives body to a lack. . . . a 'something that stands for nothing . . .'" SLAVOJ ŽIŽEK, *THE PLAGUE OF FANTASIES* 81 (1997).

⁵⁸ In their notorious broadside against postmodernism, Alan Sokal and Jean Bricourt claim that Lacan holds that the "erectile organ . . . is equivalent to the (square root of negative one)." Chief Executive, *Is it Science, or Just Plain Silly*, at <http://www.chiefexec.net/mag/162/162b.htm> (quoting ALAN SOKAL & JEAN BRICMONT, *FASHIONABLE NONSENSE: POSTMODERN INTELLECTUALS* (1998)). Of course, this statement shows that they are in fact not familiar with Lacan's theory. Lacan remarks are about the phallus, not the penis. Indeed, in his essay *Subversion of the Subject and Dialectic of Desire*, Lacan describes the square root of negative one as "what the subject lacks." JACQUES LACAN, *ÉCRITS: A SELECTION* 307, 317 (Alan Sheridan trans., 1977).

B. *The Masculine Position*

We now explore Lacan's terminology and how it relates to his theory of sexuality. The Lacanian subject is not only split, it is always also necessarily sexuated. To Lacan, sexuality is not biology. It is the position one takes with respect to one's constituent split. Nevertheless, sexuality is "figured" by anatomy and it is this figuring that is reflected not only in the metaphors that Lacan employs, but in the way we view ourselves and live our lives.

That which the subject lacks is the phallus. Accordingly, the split subject who is lacking the phallus is "castrated." This terminology obviously reflects a masculine sexual metaphor. The masculine position of subjectivity is the denial of castration. That is, the masculine aspect of personality is the part that cannot bear to face the fact of his own lack. Consequently, he tries to delude himself by falsely claiming to be whole: he claims to *have* the phallus. For reasons beyond the scope of this paper, in our society this position is associated with anatomically male human beings. Consequently, when we try to positivize the phallus we conflate it with that which men have—the penis (hence Lacan's terminology).

In contrast, the feminine position is the part of personality that accepts the fact of castration. The feminine subject recognizes that her lack is self-constituting. The feminine, therefore, stands in the place of lack. If "he" claims to *have* the phallus, "she" *is* the phallus—that which is by definition lacking. Consequently, we also conflate the phallus with that which women are—the female body.

I have written extensively about how the masculine claim that the male subject and the symbolic order are complete plays out in the symbolic realm of law, and shall not repeat it here. I discuss the feminine position and law below.

1. *Eternal Recurrence and the Masculine Position*

A simple Lacanian reading of eternal recurrence is that it is an attempt of Nietzsche to take on the masculine position despite the fact that much of his philosophy is radically feminine in the Lacanian sense. That is, the masculine Nietzsche cannot bear to face the truth that the feminine Nietzsche tries to reveal.

Nietzsche's comments about women are notorious and legion. Some Nietzscheans try to dismiss these statements as unfortunate

remnants of nineteenth century misogyny which should be ignored because they are not central to his theory.⁵⁹ Others try to explain them away in one way or another. In one of my favorite examples, I remember reading an essay in which the author quotes a friend, a feminist psychoanalyst, who claimed that Nietzsche's statements change from being problematic to being completely understandable if one replaces all references to "women" with "my mother."

In this paper I will give neither an exegesis nor a defense of Nietzsche's theory of woman, *per se*. No doubt, much of what Nietzsche has to say is just old-fashioned misogyny. I merely suggest in passing, however, that one can find in Nietzsche a premonition of the Lacanian understanding of the feminine as the radical negativity of the subject.⁶⁰

Here, I point out that although, on the one hand, some aspects of Nietzsche's thought reflect a feminine understanding of the inevitability of castration, on the other, the "masculine" Nietzsche tries to deny the implications in his problematic doctrine of eternal recurrence. This may explain both why Nietzsche was so drawn to eternal recurrence and why so many Nietzscheans find it embarrassing.

As introduced, the feminine position is the acceptance of castration. This is not merely the realization that the *subject* is split. Because she is not wholly subject to the symbolic order, the feminine subject can also see that the *symbolic order* (law, language, sexuality) is split. In Lacan's famous formulation, "the big Other does not exist" in the sense that it is not pre-existing, permanent, necessary, or objective. The feminine acceptance of castration is a denial of purpose and teleology in the sense that it is an understanding that there was never an original state of grace that was once lost, nor is there an external goal (such as the return to grace) or ideal to which we are, or should be, progressing. Consequently, Lacan insists on, but rewrites, the Christian doctrine of creation *ex nihilo*—creation from nothing. There is no pre-existing substance out of which we make our lives; we are on

⁵⁹ Walter Kaufmann, in particular, has popularized this approach. See, e.g., WALTER KAUFMANN, *NIETZSCHE: PHILOSOPHER, PSYCHOLOGIST, ANTICHRIST* 84 (1968).

⁶⁰ In the last section of this paper I suggest that the effective attorney must take on the feminine position and become a hysteric. This suggests that much of what Nietzsche says about women should be equally applicable to lawyers. Indeed, to paraphrase that unnamed female psychoanalyst, perhaps Nietzsche would become more understandable if every time he used the word "woman" we replaced it with "attorney." For example, "The attorney does not *want* truth: what is truth to an attorney? From the beginning, nothing has been more alien, repugnant, and hostile to the attorney than truth—her greatest art is the lie, her highest concern is mere appearance. . . ."

our own. The feminine subject realizes that, just as we create the symbolic order, we must create our own local, possible goals. The feminine also recognizes, however, that all attempts to achieve our goals are destined to fail—desire can never be fulfilled. Consequently, the feminine must concentrate not on the achievement of goals, which is impossible, but on the *act* itself. Consequently, to Lacan, the feminine is the position of *pure doing*.

Put this way, the Lacanian feminine sounds surprisingly like Nietzsche. Nietzsche, unfortunately, does not have the fortitude to remain a woman. Unable ultimately to bear the thought of castration, he reverts to masculinity and adopts the doctrine of eternal recurrence. Eternal recurrence is a masculine strategy by which one can both recognize that castration has occurred, while at the same time denying it. As I shall discuss shortly, the specific strategy adopted by Nehamas might be that of fetishism.

The most crude way the masculine denies castration is the empty claim of possession. He merely insists that he *has* the phallus despite all evidence to the contrary. This is the insistence that he is whole, objective, and in control—that there is nothing missing. Obviously this position cannot be sustained permanently.

When the masculine is forced to confront the fact that he and the symbolic order do not meet this criteria, he adopts alternate strategies to avoid the implications. The typical alternative to a claim of possession is a claim of exchange. The masculine tells himself that the reason why he does not have the phallus (is not complete) *now*, is not because he has *lost* the phallus, nor because it has been taken away from him in castration. Rather, he has only temporarily and conditionally given up the phallus in exchange for a substitute one in the future. That is, a present possessory property claim is replaced with an imaginary executory contract for future delivery.

This is Lacan's rewriting of Freud's Oedipal family romance.⁶¹ The "incest taboo" is not the literal (or real) "do not sleep with your mother or murder your father." It is the symbolic injunction of the superego to the subject not to seek to become whole, and to

⁶¹ To Lacan, the Oedipal complex does not reflect the actual experience of childhood development (that is, children do not literally want to have sex with their mothers and kill their fathers), but a retroactive re-imagining of childhood from the perspective of adulthood. As Lacan says in his Seventh Seminar on the ethics of psychoanalysis: "One shouldn't forget that in a sense Oedipus did not suffer from the Oedipus complex, and he punished himself for a sin he did not commit. . . . He flees those whom he thinks are his parents, and commits a crime in trying to avoid it." JACQUES LACAN, THE SEMINAR OF JACQUES LACAN BOOK VII: THE ETHICS OF PSYCHOANALYSIS 1959-60, at 304 (Jacques-Alain Miller ed., Dennis Porter trans., 1992) (1986) [hereinafter LACAN, SEMINAR VII]. As Lacan elaborates in Seminar XVII, "the Oedipus complex is Freud's dream. Like all dreams it needs to be interpreted." LACAN, SEMINAR XVII, *supra* note 46, at 159.

merge the three orders back into a mythological pre-subjective unity. The primal integrity that is lost in castration is imagined as the uterine union with the feminine as the phallic mother. In order for the masculine infant to be initiated into the symbolic order of adulthood, he must obey the law of the Father and shift his identification away from the feminine to the masculine.

Castration is, therefore, the perceived loss of access to the feminine. The child retroactively rationalizes this "loss" by fantasizing that it is only one half of a bargain. If the masculine subject retroactively acquiesces in his loss of the feminine as phallic mother now, it is because he fantasizes that the symbolic order will provide him in the future with the feminine in the form of a perfect mate who will make him whole. By doing so, the symbolic order will recognize the masculine subject as one of its members. In this way, the masculine can claim that he has not "lost" the phallus because he has only temporarily ceded one phallus in the expectation of the imminent acquisition of another one. This is played out in traditional cultures, including our own until extremely recently, in which masculine solidarity is achieved by excluding women from the public and social (expulsion of the phallic mother from the symbolic), and the exchange of women in marriage. Needless to say, this strategy is never completely successful—we are all castrated and the phallus cannot make us whole because it is nothing but lack itself. As I have suggested elsewhere, "the masculine gives up something he never had (the feminine in the form of the phallic mother) in exchange for something that doesn't exist (the feminine in the form of a perfect mate) to achieve something with no content (subjectivity)."⁶²

Eternal recurrence can be interpreted as an attempt to obtain and retain the phallus through exchange. Nietzsche—the woman—at one moment understands that she and the symbolic order are castrated. There is no "objective" teleological truth that will order her life; one's personality is a work in progress created *ex nihilo*. But, at the next moment, Nietzsche—the man—cannot bear this thought and seeks a way to regain the phallus that he has just declared to be non-existent.

The way out of this seeming dilemma is action: to live one's life so that one experiences at least one moment that, if endlessly

⁶² SCHROEDER, THE VESTAL AND THE FASCES, *supra* note 42, at 85. "I give something in exchange for nothing—or (and therein consists its fundamental paradox), in so far as the incestuous object is in itself impossible, I give nothing in exchange for something (the 'permitted' non-incestuous object)." SLAVOJ ŽIŽEK, FOR THEY KNOW NOT WHAT THEY DO: ENJOYMENT AS A POLITICAL FACTOR 231 (1991) [hereinafter ŽIŽEK, FOR THEY KNOW NOT WHAT THEY DO].

repeated, would not merely make the countless banal sufferings of the rest of one's life not merely bearable, but acceptable or even wanted. That is, "[i]t does not matter that we pass away and return and pass away again. What counts is what we eternally do, the joy in overcoming, whatever our task may be, and the meaning we give to our lives."⁶³ By definition, Nietzsche cannot suggest a universal rule for any man to follow in order to achieve this self-justifying subjective moment.

2. *Ressentiment*

A second implication of the possibility of eternal recurrence is an argument as to how one could avoid *ressentiment*: the cankerous bitterness and envy that plagues the inferior man. Everyone has had the experience of thinking, "if only I had a chance to do this over again, I'd get it right." In *ressentiment* one bitterly obsesses over the slings and arrows of outrageous fortune, and all those people and injustices which have stood in one's way.

Eternal recurrence can help one avoid *ressentiment* when it is understood within Nietzsche's theory of the necessary interconnection of things. According to Nehamas, Nietzsche:

believes that the world and everything in it are such that if anything in the world ever occurred again (though this is in fact impossible) then everything else would also have to occur again. This is so because Nietzsche accepts the view that the connections that constitute everything in the world, and in particular the connections that constitute each person out of its experiences and actions are absolutely essential to that person.⁶⁴

In other words, you are your past. I am what I am today because of everything that happened yesterday, not only in my paltry life, but everywhere in the world. If anything had been different then, then I would be different now. Eternal recurrence is, in other words, a denial of the premise of the movie *Groundhog Day* in which Bill Murray's character is cursed, and eventually blessed, to live the same day over and over again (with, however, the memory of all previous relivings) until he gets it "right." In this reading, Nietzsche's point is not just that one should live one's life in a certain way because one will, in fact, live it over and over again.⁶⁵ Rather, it is that one should look forward because one could not

⁶³ DANTO, *supra* note 11, at 212.

⁶⁴ NEHAMAS, *supra* note 18, at 6-7.

⁶⁵ "But he also accepts the stronger view that if *any* object in the world were at all different, then *every* object in the world would also be different." *Id.* at 155.

change the past *even if one could relive one's life*.

[The theory of eternal recurrence] holds that a life is justified only if one would want to have again the same life one had already had, since, as the will to power shows, no other life can ever be possible. The eternal recurrence therefore holds that our life is justified only if we fashion it in such a way that we would want it to be exactly as it had been already.⁶⁶

The idea of eternal recurrence is to experience one moment of satisfaction in which the subject can say "yes!" to life—to not be castrated. Because this moment will return eternally, this is equivalent to saying that his castration shall always be cured—even if he is missing it now, the phallus shall always return to him in the future over and over and over again. Indeed, eternal recurrence is, in effect, an attempt to collapse the future performance of the executory contract of exchange back into a present possessory claim of property. Eternity is equivalent to the collapse of all time into a single moment. In Alphonso Lingis's words, eternal recurrence is "an infinity in the present moment, an eternity in intensity—the 'deep, deep eternity.'"⁶⁷ Consequently, one's life *does* have a teleology—to return to the same place.

As I already suggested, Nietzsche replaces Kant's standard of universality with eternity. Universality is possession, and eternity is exchange. In a theory based on the former, the masculine subject tells himself that the phallus is always here. In a theory based on the latter, he tells himself that the phallus will always return.

Debra Bergoffen tries to defend Nietzsche's theory of eternal recurrence as an attempt to short-circuit Lacan's vicious circle of desire:

Nietzsche recognizes the insistent and insatiable nature of the desire for the absolute as he argues against the reinstitution of the repression of subjectivity. Recognizing that the dialectic of desire cannot be given up, and insisting that the recognition of existential singularity should not be given up, Nietzsche uses the value of the recognition of subjectivity to displace the meaning of the desire for the absolute. Ultimately, he will propose the eternal recurrence as the object of this desire. . . . He asks us to

⁶⁶ *Id.* at 7.

⁶⁷ Alphonso Lingis, *The Will to Power*, in *THE NEW NIETZSCHE: CONTEMPORARY STYLES OF INTERPRETATION* 37, 60 (David B. Allison ed., 1985). In Löwith's words: [T]he motif of "overcoming," not only of one's own time and of oneself, but of the temporality of time altogether, toward the eternity of the eternal recurrence of the same. "The true eternity is not the one that excludes all time, but the one that itself holds time (eternal time) in submission. True eternity is the overcoming of time."

LÖWITH, *supra* note 20, at 186.

recognize the need to renounce God as the object of our desire for the absolute. Ultimately, he will demand that we transform our desire for the *one* into a desire for oneness, that we transform the desire for the singular to the desire for singularity.⁶⁸

That is, in Bergoffen's view, Nietzsche understands the futility of desire conceived as the impetus for an impossible divine wholeness, and seeks to reinterpret it as an obtainable human oneness. She suggests: "The desire for the absolute must speak the desire of desire rather than the desire of fulfillment. It must value the lack and the movement of overcoming the lack rather than the lack overcome."⁶⁹ But this supposed resolution of the problem of desire is merely the masculine denial of the problem. Desire is still understood as the resolution of the constituent split of subjectivity, the healing of the scar of castration, and the achievement of integrity. From a Lacanian perspective, the desire for the One is the same as the desire for oneness. Bergoffen's Nietzsche, like the masculine subject engaged in the fantasy of exchange, admits that he does not have, and cannot have, the original phallus understood as merger with the divine, but only because he fantasizes that he will soon obtain the phallus of personal integrity. That is, the phallus of eternity replaces the phallus of universality. In Löwith's words: "Such a simplified world is the ring . . . of the eternal recurrence. The 'fragment' 'man' completes himself in the whole of this world-historical ring by means of a will that wills to get out to what else can be by willing back to what already was."⁷⁰

In proposing this interpretation of Nietzsche, Bergoffen, like the masculine subject, forgets her initial correct analysis that the Lacanian-Nietzschean subject is nothing but the split or desire. If so, one cannot, as Bergoffen suggests, resolve the paradox of desire (by substituting oneness for the One as the object of desire) while still remaining a subject. Indeed, the resolution of desire is precisely the suppression of subjectivity that Bergoffen believes Nietzsche is trying to avoid. For the subject to remain a subject he must sustain, not resolve, desire. If this is a correct interpretation of the theory of eternal recurrence, it is necessarily a failed concept.

Consequently, I will offer a more interesting interpretation of eternal recurrence from a Lacanian standpoint. Perhaps it is not a failed masculine attempt to resolve desire while sustaining subjectivity. Rather it is an attempt to renounce desire with the

⁶⁸ Bergoffen, *supra* note 49, at 62.

⁶⁹ *Id.* at 69.

⁷⁰ LÖWITH, *supra* note 20, at 111.

understanding that to do so is precisely to sacrifice one's subjectivity. That is, eternal recurrence looks forward to the rotary motion of drive. I show that this interpretation makes the concept of eternal recurrence more consistent with one of Nietzsche's other most important concepts—the will to power.

3. The Fetishist Split

Before moving on to drive, I wish to suggest that Nehamas' defense of eternal recurrence is a sophisticated version of the masculine denial of castration. He would no doubt argue that my foregoing interpretation of eternal recurrence as the masculine subject's attempt to deny castration ignores his argument that one need not believe that eternal recurrence is literally true. As discussed, in his view, one can understand eternal recurrence as a mere thought experiment or a test of strength, rather than a cosmology. For the purpose of developing a moral theory, it is sufficient if eternal recurrence is a mere enigma or possibility. As such, eternal recurrence can operate even if we admit that it might not *really* be true (and the phallus might not *really* return), so long as we live our lives as though it were true (and it would return). Lacan calls this an attempt to have one's cake and eat it too the "fetishist split."

The fetishist split is one of several strategies that Žižek suggests one can take when one is confronted with the fact of castration in the sense that the big Other does not exist (the symbolic order is not the natural, pre-existing, closed, and objective system it claims to be) and there is no Other of the Other (there is no God, teleology, or other guiding spirit behind the symbolic order).⁷¹ Fetishism is, of course, a characteristically masculine psychic position.

The subject in a fetishist split at one conscious level recognizes castration, but in his unconscious beliefs and actions, he cannot accept its implications. The fetishist says, "I know that X isn't true, and yet, to be on the safe side, I will act as though it were true." Žižek gives an excellent example—the public reaction to the so-called "Y2K bug" in late 1999. On radio, television, and in the newspapers, officials and other talking heads repeatedly tried to assure the public that the bug would not cause major disruptions, but just in case one should withdraw extra cash from

⁷¹ Jeanne L. Schroeder, *The Four Discourses of Law: A Lacanian Analysis of Legal Practice and Scholarship*, 75 TEX. L. REV. 15, 74-75 (2000) [hereinafter Schroeder, *Four Discourses*].

the ATM, buy extra milk and other staples, make sure the flashlight has batteries, etc.⁷² In Nehamas', (and perhaps Nietzsche's) case, he says, in effect, I know that my life will not eternally recur, and yet in order to be safe (to know myself to be strong), I must live my life as though it were.

In the fetishist split (I know, but nevertheless . . .), the denied fact becomes the denying subject's *objet petit a*. If it were true, then it would explain one's life. It gives body to lack.

C. Drive

Up to now I have been speaking about desire. Now I turn to that which Lacan called libido, the myth of the lamella, but most frequently the "drive."⁷³

1. Driving in Circles

Distancing himself from Freud, Lacan did not equate drive with either the animal mating instinct, nor with human sexuality which is characterized by desire. Rather, drive is a uniquely human, non-sexual impulse—it may be thought of as that part of our primordial "real" animal instinct that is left over *after* its sexual aspect has been symbolized as desire.⁷⁴

Animal instinct and desire have goals. In the former, this goal is always easily fulfilled by the physical act of mating (or eating, or whatever). Because desire is the desire for completion, desire is teleological: desire has both an aim (impetus) and a goal (an end, a cause). The goal of desire is, however, imaginary in that it (attaining the object of desire, *jouissance*, wholeness, etc.) can never be achieved, only pursued. In contrast, drive has no goal, it

⁷² SLAVOJ ŽIŽEK, DID SOMEONE SAY TOTALITARIANISM?: FIVE INTERVENTIONS IN THE (MIS)USE OF A NOTION 252-56 (2001) [hereinafter ŽIŽEK, TOTALITARIANISM].

⁷³ RENATA SALECL, (PER)VERSIONS OF LOVE AND HATE 48 (1999). Lacan's most thorough discussion of the drive are contained in his eleventh seminar, translated into English as JACQUES LACAN, THE FOUR FUNDAMENTAL CONCEPTS OF PSYCHOANALYSIS (Jacques-Alain Miller ed., Alan Sheridan trans., 1977) [hereinafter LACAN, THE FOUR FUNDAMENTAL CONCEPTS], and in the essay *The Positions of the Unconscious* which was published in the French (but not the English) edition of *Écrits*, and has been recently published in JACQUES LACAN, READING SEMINAR XI: LACAN'S FOUR FUNDAMENTAL CONCEPTS OF PSYCHOANALYSIS 259 (Richard Feldstein et al. eds., 1995) [hereinafter LACAN, READING SEMINAR XI].

⁷⁴ See SALECL, *supra* note 73, at 48. In Lacan's words "[m]y lamella [Lacan's mythic personification of the drive] represents here the part of a living being that is lost when that being is produced through the straits of sex." LACAN, READINGS SEMINAR XI, *supra* note 73, at 274.

only has *aim*.⁷⁵ It is thrust without purpose other than its own activity. Drive does not impel us to achieve a goal (possible in the case of instinct and impossible in the case of desire), but pressures us to continue doing what we are doing. Drive is the Nike slogan, "Just Do It!"

Drive is an attempt to get beyond the impossibility of desire by forswearing desire entirely. The relationship of drive to enjoyment is the obverse of that of desire and *jouissance*.⁷⁶ *Jouissance*, or enjoyment, is an extremely complex and paradoxical idea that I can only touch on here. The concept does not have the colloquial meaning of "pleasure." It often takes the form of the perverse pleasure we feel in pain. Indeed, it is unbearable. For the very limited purposes of this paper, enjoyment can be thought of as the momentary ecstatic collapse of the three orders into a primal unity. As such, enjoyment is an obliteration of subjectivity that is as much to be feared as to be desired.

Nevertheless, as the achievement of the real, enjoyment is the elusive object or goal of desire. It is the necessary failure of desire to reach its goal that is the engine of desire. Consequently, in the realm of desire, enjoyment is always forbidden and always pursued. In drive, however, the subject who gives up on desire also, necessarily, ceases to chase enjoyment. Paradoxically, however, the driven subject always achieves a certain idiotic enjoyment merely by endlessly engaging in the activity without purpose.⁷⁷ In drive, one does not try to reach one's object little *a*, one just happily circles around it. Having no goal that can be thwarted, the subject of the drive is always satisfied or, more accurately, can never be *unsatisfied*.⁷⁸ The drive results in an

⁷⁵ Marie-Helene Brousse, *The Drive (II)*, in READING SEMINAR XI, *supra* note 73, at 109, 112; Antonio Quinet, *The Gaze as an Object*, in LACAN, READING SEMINAR XI, *supra* note 73, at 139, 140-41.

⁷⁶

Desire and drive are clearly opposed with respect to the way they relate to *jouissance*. . . . Desire stands for the economy in which whatever object we get hold of is "never it", the "Real Thing", that which the subject is forever trying to attain but which eludes him again and again, while drive stands for the opposite economy, within which the stain of *jouissance* always accompanies our acts.

SLAVOJ ŽIŽEK, THE TICKLISH SUBJECT: THE ABSENT CENTRE OF POLITICAL ONTOLOGY 291 (1999) [hereinafter ŽIŽEK, THE TICKLISH SUBJECT].

⁷⁷ In Žižek's words, "an idiotic-happy circuit of the apparatus which produces *jouissance*, is this not the very definition of *drive*?" *Id.* at 295; see also Quinet, *supra* note 75, at 140-41.

⁷⁸

Drive paradoxically always finds satisfaction, while desire has to remain unsatisfied, endlessly going from one object to another, positing new limits and prohibitions. Drive is thus a constant pressure, a circulation around the object *a*, which produces *jouissance*—a painful satisfaction. The object *a*, the object around which drive circulates, thus needs to be understood as a special kind of

obscene enjoyment through compulsive repetitive activity to its utter destructive limit, no matter what the consequences. It is the dance of death.

Drive is the Freudian pleasure principle. Lacan, however, departs from Freud and rejects the opposition between the pleasure principle and the death drive and declares them to be one and the same thing: all drives are *death* drives.⁷⁹ Drives ceaselessly continues to circle around the subject's painful pleasure of always being satisfied, because he has no goal. Consequently, the subject of the death drive is curiously immortal—in the sense that the living dead are immortal. The subject of the drive is always already dead, because he is unable to live.⁸⁰ Being obsessively and mindlessly driven, the subject of a drive loses her freedom and becomes a passive object.

It is *this* asexual, solipsistic satisfaction that is the enjoyment of eternal recurrence. Nietzsche has given up on the concepts of a goal—a teleology—and of the possibility of the wholeness of the symbolic order. God is dead. Because of this, the superior man gives up on Lacanian desire. Instead, he accepts the will to power—drive—the mere expansion of energy for its own sake. He will find that which gives him pleasure and just do it. The ideal of eternal recurrence is that he will act as though he were to do this over and over again. If eternal recurrence is a literal cosmology, he will in fact do this forever, like the vampire who never grows old.

satisfaction: "The object that corresponds to drive is *satisfaction as object*." In this search for satisfaction, drive resembles perversion.

SALECL, *supra* note 74, at 50 (quoting Jacques-Alain Miller, *On Perversion*, in *READING SEMINARS I AND II: RETURN TO FREUD* 313 (1996)). See also LACAN, *THE FOUR FUNDAMENTALS CONCEPTS*, *supra* note 73, at 166-67.

⁷⁹ LACAN, *READINGS SEMINAR XI*, *supra* note 74, at 275. In Lacan's rewriting of Freud, the death drive has nothing to do with the "desire" to die. In fact, Žižek intimates that the death drive is the immortal part of our soul—its universality. ŽIŽEK, *THE TICKLISH SUBJECT*, *supra* note 76, at 292-94. The death drive is the same as the pleasure principal. The death drive as compulsion is the very inability to die, or to realize Thanatos, the desire for death as release.

The death drive is the "satisfaction in aberration, and even in aberrant acts directed against yourself, that is, finding satisfaction in aggression for the sake of aggression." Jacques-Alain Miller, *A Discussion of Lacan's "Kant With Sade"*, in *READING SEMINARS I AND II: LACAN'S RETURN TO FREUD* 212, 220 (Richard Feldstein et al. eds., 1996).

⁸⁰ "[T]he 'death drive' designates the dimension of what horror fiction calls the 'undead,' a strange, immortal, indestructible life that persists beyond death." ŽIŽEK, *THE TICKLISH SUBJECT*, *supra* note 76, at 294. Caught in this unending circle of perverse satisfaction and pressure, the subject of drive—like the legendary vampire of fiction—learns to escape into true death. Lacan introduces this uncanny aspect of the death drive in his famously bizarre myth of the lamella—the monstrous, immortal living dead, asexual twin born with each human subject. See LACAN, *READINGS SEMINAR XI*, *supra* note 73, at 273-76.

2. Subjective Destitution and the Will to Power

As described, drive sounds horrific—and it often is. This is why Nietzsche correctly insists that one's initial reaction to eternal recurrence is likely to be gut-wrenching nausea. Drive is, however, also the only type of cure that Lacanian psychoanalysis can offer.⁸¹ The most that psychoanalysis can do for the suffering analysand is to help her give up on her impossible desire that brings only pain. Drive is the only alternative. Lacan calls this cure "subjective destitution."

In Žižek's words:

"[S]ubjective destitution" changes the register from desire to drive. Desire is historical and subjectivized, always and by definition unsatisfied, metonymical, shifting from one object to another since I do not actually desire what I want. What I actually desire is to sustain desire itself, to postpone the dreaded moment of its satisfaction. Drive, on the other hand, involves a kind of inert satisfaction that always finds its way; drive is nonsubjectivized ("acephalous").⁸²

Having given up on desire, the driven subject has no need for an *objet petit a* as the cause of his desire. "The subject becomes 'cause of myself' in the sense of no longer looking for a guarantee of his or her existence in another's desire."⁸³ My phrase, "driven subject" is, therefore, a misnomer. The driven person is non-subjectified. When she acts, it is not because she desires to do so. Rather, "it wants it." In other words, if the subject is nothing but the capacity for desire, and if cure is the replacement of desire by drive, then to be cured is to lose one's subjectivity. In drive, the "subject" achieves an idiotic enjoyment, but enjoyment is precisely the obliteration of subjectivity. This is why Žižek describes the driven person as the living dead—he continues to act but he is no longer a subject.

Drive as the de-subjectification of desire and objectification of the person can also be seen in Nietzsche's concept of will to power—which is now revealed to be inextricably linked to eternal recurrence. Nietzsche's misleading terminology might suggest that he is referring to a conscious act by which a subject seeks to

⁸¹ Perhaps this is why "Lacan said that psychoanalysis did not have as its goal curing patients, and that if people in analysis did get better it was a welcome side effect." STUART SCHNEIDERMAN, JACQUES LACAN: THE DEATH OF AN INTELLECTUAL HERO 50 (1983).

⁸² ŽIŽEK, *ABYSS*, *supra* note 55, at 80.

⁸³ *Id.*

impose his will on the world or others (a form of desire). This is incorrect. There is no subject of the will to power.⁸⁴ Rather, the subject, like everything in the world, inanimate and animate, is subject to the will to power. Life itself is nothing but the will to power.⁸⁵ To Nietzsche, "there is no such thing as a will"⁸⁶ in the sense of a subjective, intentional state of mind. "[T]he will as a conscious faculty is neither a unity nor a primary term."⁸⁷ Indeed, "[w]illing" is not "desiring," striving, demanding: it is distinguished from these by the affect of commanding. . . . It is part of willing that something is commanded That state of tension by virtue of which a force seeks to discharge itself—is not an example of 'willing.'⁸⁸

"To will is to feel the triumph of a force that has cleared a way for itself quite apart from our knowing anything about it[.]"⁸⁹ "The will that is Will to Power responds at its origins to its own internal imperative: *to be more*."⁹⁰ The will to power is circular, or in Nietzsche's terminology, "chaotic," in that it does not aim towards any goal other than the eternal repetition of itself—chaos is "the moment when, all values collapsed, the Will to Power effects a return to itself, a sort of return to point zero."⁹¹

As in drive, the subject of the will to power does not act. Rather, "it" (the will) acts through the subject. In Deleuze's words "The Will to Power alone is what wills; it is neither relegated nor removed to another subject, even by force."⁹²

Although Nietzsche says that life is nothing but the will to power, one should not assume from this that the will to power is the desire for self-preservation. Indeed, if the will to power were, it would have a goal and be teleological—a form of desire. Rather,

⁸⁴ "[A]ny interpretation of the Will to Power that is solely psychological or anthropological" is a "gross misconception." Haar, *supra* note 19, at 8. "The Will to Power is something much different from the psychological relationship between a subject *qua* will and an object *qua* power." *Id.*

⁸⁵ "But *what is life*? Here we need a new, more definite formulation of the concept 'life.' My formula for it is: Life is will to power." NIETZSCHE, WILL TO POWER, *supra* note 6, at 148.

⁸⁶ Haar, *supra* note 19, at 9 (citing NIETZSCHE, WILL TO POWER para. 46).

⁸⁷ *Id.*

⁸⁸ NIETZSCHE, WILL TO POWER, *supra* note 6, at 353.

⁸⁹ Haar, *supra* note 19, at 10.

⁹⁰ *Id.* at 11.

⁹¹ *Id.*

⁹² Deleuze, *supra* note 30, at 87. See also Pierre Klossowski, *Nietzsche's Experience of the Eternal Return*, in THE NEW NIETZSCHE: CONTEMPORARY STYLES OF INTERPRETATION 107, 117 (David B. Allison ed., 1985). "The Will to Power is only a *humanized* term for the soul of the vicious circle, while the circle itself is pure intensity *without intention*." *Id.* "The feeling of eternity and the externalization of desire are merged in a single moment. . . ." *Id.* at 119.

the will to power is the assertion of its circular, whirling, chaotic force regardless of the effect on the subject. Consequently, when the will to power takes the form of a searching for truth or identity, then it becomes a nihilistic will to power, "or, more bluntly, . . . a covert will to die, a covert death-wish."⁹³

In Löwith's words, "Zarathustra's real word is the freedom toward death, which freedom is *at one* with the will to the eternal recurrence. But the recurrence is not proclaimable until after the temptation to destroy oneself has already been overcome."⁹⁴

Consequently, "The Will to Power is an abyss . . . the groundless chaos beneath all the grounds, all the foundations, and it leaves the whole order of essences groundless."⁹⁵ The will to power that governs the world as well as ourselves is the very concept of the lack of teleology that underlies the concept of eternal recurrence. It is drive as the denial of the goal that constitutes desire.⁹⁶

In fact, at the moment when I am struck by the sudden revelation of the Eternal Return, *I no longer am*. In order for this revelation to have any meaning, it is necessary that I lose consciousness of myself, and that the circular movement of the return be merged with my unconsciousness until such time as it leads me back to the point where the necessity of living through the entire series of my possibilities is revealed to me.⁹⁷

Drive, like eternal recurrence, is ultimately "a closed" system.⁹⁸ "[T]here is a *subject of desire* and an *object of drive*. In desire, the subject longs for the (lost) object, whereas in drive, the subject makes herself an object"⁹⁹ subjected to the will to power. This is why Nietzsche says that the superman must overcome his humanity.

One criticism of Nietzsche's theory of eternal recurrence is that it is inconsistent with notions of freedom and subjectivity found elsewhere in his work and in the very concept of will. Indeed, Löwith ultimately considers eternal recurrence to be a noble failure for this reason.¹⁰⁰ But this apparent contradiction

⁹³ Haar, *supra* note 19, at 18.

⁹⁴ LÖWITH, *supra* note 20, at 67.

⁹⁵ Lingis, *supra* note 67, at 38.

⁹⁶ "Nietzsche argues that if the world had a goal, it must have been reached The ideal order of metaphysical essences exists by eternal recurrence." *Id.* at 43.

⁹⁷ Klossowski, *supra* note 92, at 109.

⁹⁸ ŽIŽEK, *ABYSS*, *supra* note 55, at 84.

⁹⁹ *Id.* at 85.

¹⁰⁰ For example, Löwith states:

But the fact that the mere idea of a possibility can "have an influence" does not abolish the distinction between an actual recurrence . . . and a recurrence that is only thought as a possibility. And if, on the other hand, it were certain

disappears when one interprets eternal recurrence as drive and recognizes that the will to power is not subjective. Eternal recurrence as subjective destitution—the objectification of the subject—requires an impersonal will. Human nature must be overcome. The eternal recurrence of the same is predestination—the freedom *from* freedom. Consequently, Nietzsche declares that “[t]he highest state a philosopher can attain . . . is *amor fati*[.]”¹⁰¹ love of fate.

This necessarily follows from Nietzsche’s insistence on the death of God. It is a common misunderstanding to suppose that: “If God doesn’t exist, . . . then everything is permitted. Quite evidently, a naive notion, for we analysts know full well that if God doesn’t exist, then nothing at all is permitted any longer. Neurotics prove that to us every day.”¹⁰²

The impossible position of subjectivity and desire are the preconditions of freedom.¹⁰³ The will to power is nothing but the freedom *from* freedom.

3. Cure

Nietzsche was, of course, fighting a losing battle with psychosis. The psychotic is the subject that truly sees that the big Other does not exist. The cynic who thinks that he sees through the fraud of the social and, therefore, that it does not function, is in fact the person most subject to the symbolic order because he is unaware of how it constrains him. The fetishist knows that the big Other does not exist, but nevertheless acts as though it does, thereby making it function. The most healthy individual sees that the big Other does not exist, but understands that nevertheless we can make it function. For the psychotic, however, the big Other

that at all events everything recurs, then the demand “to live as if” would lose all reasonable meaning.

LÖWITZ, *supra* note 20, at 88. He continues:

For if human life is turned upside down again and again like an hourglass, and if human existence including human ideas is only *one* ring in the great ring of the eternal recurrence of all that is—what sense would it then still make to want to get above oneself, to will a European future, to “will” anything at all? This contradiction emerges all the more strikingly inasmuch as Nietzsche develops the one meaning as an *ethical imperative* and the other as a *scientific theory*.

Id.

¹⁰¹ NIETZSCHE, WILL TO POWER, *supra* note 6, at 536.

¹⁰² JACQUES LACAN, THE SEMINAR OF JACQUES LACAN: BOOK II: THE EGO IN FREUD’S THEORY AND IN THE TECHNIQUE OF PSYCHOANALYSIS 1954-55, at 128 (Jacques-Alain Miller ed., Sylvana Tomaselli trans., 1988) (quoting words that Dostoyevsky placed in the mouth of the father in *The Brothers Karamazov*) [hereinafter LACAN, SEMINAR II].

¹⁰³ See Schroeder, *The Stumbling Block*, *supra* note 32.

literally disintegrates before his eyes. He cannot maintain his castration—the distinction between the real, imaginary, and symbolic that makes consciousness possible. He rants as the symbolic world of words loses meaning for him and he hallucinates as the real world starts speaking to him. Armchair psychoanalysis of a historical figure is a notoriously foolish enterprise. Nevertheless, was Nietzsche's theory of eternal recurrence an attempted home remedy for psychosis?

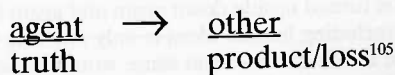
III. CAN LAWYERS BE CURED?

Does the doctrine of eternal recurrence have anything to add to the practice or study of law? Lawyers are a notoriously cantankerous lot. We do not merely carry grudges, a substantial part of our practice consists precisely in carrying other peoples' grudges. Moreover, studies show that lawyers, as a group, are unusually unhappy. In stark contrast to successful students in every other discipline, depressive law students actually outperform their happier colleagues. Could lawyers overcome their resentment and unhappiness by adopting the positive view of life caused by the acceptance of the eternal return? Could they submit to the idiotic enjoyment of drive? Can lawyers be cured?

No, they cannot and still practice as attorneys.

A. Discourse

I have argued extensively elsewhere that the legal profession can be analyzed within Lacanian discourse theory.¹⁰⁴ Lacan proposed that there were four discourses: that of the master, the university, the analyst, and the hysteric. Each discourse can be represented by the following diagram:



On the upper level, an agent, the person, or institution "speaking" in the discourse,¹⁰⁶ addresses someone or something else as its other.¹⁰⁷ This relationship is represented by the arrow

¹⁰⁴ See Schroeder, *Four Discourses*, *supra* note 71.

¹⁰⁵ FINK, *supra* note 43, at 131.

¹⁰⁶ *Id.* at 130-31.

¹⁰⁷

proceeding from the agent to the other.¹⁰⁸ Beneath the other lies that which is produced by the discourse.¹⁰⁹ This can be something created or something lost. Beneath the agent lies the hidden truth of the agent.¹¹⁰ The positions in upper register (the agent and the other) are separated by a bar from their correspondents in the lower register (the truth and the product, respectively), representing the fact that the upper level is somehow split, separated, or barred from the lower.¹¹¹ There is also no arrow connecting the two sides of the lower register, representing the fact that there is no direct, immediate relationship at this level.

There are four concepts that rotate around the four positions in the matrix of discourse: S_1 , S_2 , a , and $\$$.¹¹² Lacanians will recognize that these stand for the Master Signifier, the signifying chain (or knowledge), the *objet petit a*, and the split subject respectively. These concepts take on slightly different meanings depending on where they are placed in the matrix.¹¹³ In this paper, I will only discuss certain aspects of these concepts in connection with their position in the hysteric's discourse.

On the right, the side of the receiver, the top position is designated as that of the other, which is occupied by the factor called into action by the dominant factor in the message. The activation of this factor is a prerequisite for receiving and understanding a given message or discourse. For example, if systematic knowledge is the dominant element of a discourse (occupying the top left position), receivers, in order really to receive (i.e., understand) this discourse, must (for a moment, at least) be receptive to a preconstituted knowledge, which means emptying themselves of any knowledge that might interfere with the knowledge in the discourse and becoming an amorphous, nonarticulated substance, a , to be articulated by the discourse.

Mark Bracher, *On the Psychological and Social Functions of Language: Lacan's Theory of the Four Discourses*, in *LACANIAN THEORY OF DISCOURSE: SUBJECT, STRUCTURE, AND SOCIETY* 107, 109 (Mark Bracher et al. eds., 1994).

¹⁰⁸ FINK, *supra* note 43, at 131.

¹⁰⁹ "What is produced as a result of [those who are placed in the position of the other] allowing themselves to be thus interpellated by the dominant factor of a discourse is represented by the position of production, the bottom right." Bracher, *supra* note 107, at 109.

¹¹⁰

The top position on each side represents the overt or manifest factor, the bottom position the covert, latent, implicit, or repressed factor—the factor that acts or occurs beneath the surface. More specifically, the top left position is the place of agency or dominance; it is occupied by the factor in a discourse that is most active and obvious. The bottom left position is the place of (hidden truth, the factor that underlies, supports, and gives rise to the dominant factor, or constitutes the condition of its possibility, but is repressed by it.

Id.

¹¹¹ This "bar" between the two registers is, in fact, the same "bar" that bifurcates the matheme of the split subject ($\$$) and, therefore, represents a fundamental rupture.

¹¹² FINK, *supra* note 43, at 173.

¹¹³ I present my interpretation of the meanings of these ideas when the four discourses are applied to legal scholarship and practice in Schroeder, *Four Discourses*, *supra* note 71.

The discourse of the master is law understood from the position of the law giver. It is the positivist view of law associated with H.L.A. Hart.¹¹⁴ The discourse of the university is law understood from the position of expertise. It is law as engaged in by the expert who interprets and applies the law to manipulate the actions of others in order to achieve a policy goal.¹¹⁵ The first two discourses are the discourses of power engaged in by the state and its courts, and that large part of legal academia that views its role as giving advice to the state. They approach the law from the position of the governor.¹¹⁶

It is the last two discourses that properly apply to the practicing attorney. These two discourses approach law from the position of the governed—the subject subjected to the law.¹¹⁷ The discourse of the analyst is the understanding of law from the position of the harm caused, or potentially to be remedied by the law. It is engaged in by the attorney when she advises and counsels her client.¹¹⁸ The attorney engages in the discourse of the hysteric when she represents her client.¹¹⁹

B. *Hysteria*

Because the vast majority of legal practice takes place within the hysteric's discourse, I will limit my remarks to it. As already introduced, hysteria is the characteristic position of subjectivity. The hysteric's subjectivity is created and exists through her desire. Sometimes this is expressed in the slogan, "the desire of man is the desire of the Other."¹²⁰ The ambiguity of the expression is intentional: the subject desires the Other, she desires that the Other desire her, and her desire is imposed upon her by the Other.¹²¹

Up until now I have used the term "Other" only in passing. Lacan's term "Other" spelled with a capital "O" can designate, but exceeds, specific other individuals desired by the subject. More

¹¹⁴ *Id.* at 46-53.

¹¹⁵ *Id.* at 53-56, 59-63.

¹¹⁶ *Id.* at 39-41.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 68-72.

¹¹⁹ *Id.* at 85-89.

¹²⁰ "To put it in a nutshell, nowhere does it appear more clearly that man's desire finds its meaning in the desire of the other, not so much because the other holds the key to the object desired, as because the first object of desire is to be recognized by the other." Anthony Wilden, *Translators Notes*, in JACQUES LACAN, *SPEECH AND LANGUAGE IN PSYCHOANALYSIS* 91 (Anthony Wilden trans., 1981).

¹²¹ See Schroeder, *Four Discourses*, *supra* note 72, at 74.

broadly, it includes alterity understood as the symbolic order itself—the social order of language, sexuality, and law.¹²² As the hysteric exists only with respect to her relationship to and with the symbolic order, she constantly seeks to understand how she fits into the symbolic. Consequently, the hysteric question is “*Che vuoi?*” What do you want (i.e., from me)?¹²³ How can I make you desire (recognize) me? What must I do to be a law abiding part of the symbolic order.

By asking “What do you want?” the hysteric can eventually have an epiphany with respect to the Other. The symbolic order wants, and, therefore, is wanting.¹²⁴ The symbolic order—including law—is not objective, necessary, permanent, and complete as it pretends to be. Rather it is subjective, contingent, temporary, and open. As I have said,¹²⁵ it is the meaning of Lacan’s famous slogan that “the big Other does not exist.” To say that it does not “exist,” however, does not mean that it does not function. The hysteric’s position is feminine in the sense that the realization that the symbolic order, like the subject, is not complete is the acceptance of castration.

C. *The Hysteric Discourse*

Why is the practicing attorney engaged in the hysteric’s discourse? In the hysteric’s discourse, the agent—in this case the attorney—puts herself in the position of the split subject (\$)—the subject who has been subjected to, and castrated by, the symbolic order.¹²⁶ Of course, in the case of the attorney, the specific split subject she speaks for is the client.¹²⁷ The hysteric’s discourse can be diagrammed as follows:

¹²² See *id.* at 74-75.

¹²³ *Id.* at 83. As explained by ŽIŽEK:

One should always bear in mind that the status of the subject as such is hysterical: the subject “is” only through its confrontation with the enigma of “*Che vuoi?*” (“What do you want?”) insofar as the Other’s desire remains impenetrable, insofar as the subject doesn’t know what object it is for the Other.

ŽIŽEK, *ABYSS*, *supra* note 55, at 79 (citation omitted). Lacan posited that the subject addresses the Big Other with the question “*Che vuoi?*” at least as early as his 1960 paper *Subversion of the Subject and the Dialectic of Desire in the Freudian Unconscious*. JACQUES LACAN, *The Subversion of the Subject and the Dialectic of Desire in the Freudian Unconscious*, in LACAN, *ÉCRITS, A SELECTION* 312 (Alan Sheridan trans, 1977).

¹²⁴ See Schroeder, *Four Discourses*, *supra* note 71, at 82-83.

¹²⁵ See *supra* text at notes 50-52.

¹²⁶ “In the hysterical link, the \$ over *a* stands for the subject who is divided, traumatized, by what an object she is for the Other, what role she plays in Other’s desire. . . .” Slavoj Žižek, *Four Discourses, Four Subjects*, in *SIC 2: COGITO AND THE UNCONSCIOUS* 79 (Slavoj Žižek ed., 1998) [hereinafter Žižek, *Four Discourses*].

¹²⁷ Schroeder, *Four Discourses*, *supra* note 71, at 83-84.

$$\frac{\underline{s}}{a} \rightarrow \begin{matrix} S_1 \\ S_2^{128} \end{matrix}$$

In the hysteric discourse the agent addresses the Master Signifier as her other: $s \rightarrow S_1$. The Master Signifier is that which is supposed to give meaning to the symbolic order represented by all of the other signifiers (S_2). "[Q]uite common master signifiers would include words like 'God,' 'Satan,' 'sin,' 'heaven,' and 'hell' in religious discourse and terms such as 'American,' 'freedom,' 'democracy,' and 'communism' in political discourse."¹²⁹ In the hysteric discourse the split subject addresses the Big Other's pretension of being pre-existing, objective, and necessary. That is, she asks "*Che Voui?*" In this case, when the Big Other of the symbolic takes the specific form of law, the Master Signifier can be the law's claim to legitimacy.¹³⁰ Specifically, the lawyer representing her client addresses the individual or institutions that are at that time claiming the status of the law. This is most obvious when the attorney petitions or sues the state on the client's behalf. But it is equally true when she brings a civil action against another person in that, by doing so, she is challenging the status quo.¹³¹ Less obviously, it is also true when the attorney negotiates contracts on behalf of the client.¹³²

The agent addresses the big Other with the hysteric's question "*Che Voui?*" When one negotiates a contract, or seeks to comply with the law (by, for example, applying for a license), this question is asked in an inquisitive, but not accusatory, voice: "What do you want from me?" in the sense of "What do I need to do to comply" or "What do you want from me in exchange for what I want from you?" In litigation, however, the question takes on its more aggressive form of the accusation of castration. The status quo is wanting and, therefore, should be changed.

The product of this discourse, located at the lower right corner, is S_2 —the signifying chain which in this case stands for "knowledge."¹³³ The hysteric can learn several things through this

¹²⁸ *Id.* at 83; FINK, *supra* note 43, at 133.

¹²⁹ Bracher, *supra* note 107, at 112.

¹³⁰ In Bracher's formulation: "It is this quest to which the receiver of the hysterical subject's message is summoned to respond by providing a master signifier, S_1 , in the form of a secure meaning that will overcome anxiety, meaninglessness, and shame and give a sense of stable, meaningful, respectable identity." Bracher, *supra* note 107, at 123. See Schroeder, *Four Discourses*, *supra* note 71, at 84.

¹³¹ Schroeder, *Four Discourses*, *supra* note 71, at 89.

¹³² *Id.* at 86-89.

¹³³ "What leads to knowledge is—I will be allowed to justify this in the more or less long term—the hysteric's discourse." LACAN, SEMINAR XVII, *supra* note 46, at 23;

discourse. First, in a limited sense, the split subject can learn what the Other wants from her—what she needs to do or say in order to fit better into the symbolic order. Of course, it is a fundamental Lacanian point that a perfect fit will never be possible—every normal subject remains split and castrated to some extent. Consequently, more critically, she can learn what is lacking in the symbolic order. She can learn what its flaws are in order to decide whether to accept them or seek to change them. This can lead to the final stage of knowledge—the knowledge that the Big Other does not exist. The reason the Big Other can never truly answer the hysteric's question "What do you want?" is explained by its alternate version as the accusation "You are wanting!" The Big Other—the symbolic order—is not a pre-existing "thing," it is our own human creation.¹³⁴

This means that only the subject herself can answer the question as to what she needs to do to satisfy her own desire and how to change the Big Other better to accomplish this. The knowledge obtained is precisely that the Big Other cannot accommodate, and does not have the truth of, the subject's desire. It is the hysteric's discourse that allows this indirect relationship to come about.

This can lead to two results. The first is depression and impotence. Why should the hysteric try when the task of completing the Other is doomed to failure? How can the hysteric face the fact that she is partially responsible for the imperfection (and resulting violence and injustice) of the social order when she cannot cure it?

Alternately, however, this knowledge can give the hysteric the courage to go on. Once one rejects the impossible goal of making the Other perfect, the hysteric's profession of building the Other becomes possible. The fact that the Other is not natural or complete means that it is a work of art in progress. The hysteric can express her creative freedom by furthering its progress. The hysteric can harbor the hope that she can at least partially expiate her guilt for participating in the injustice of the status quo by trying to undo this injustice. She cannot make things perfect, but perhaps she can make things better.¹³⁵

In the specific context of law, the result that is produced is knowledge in the sense of a greater understanding of the relationship between the law and the subject. This knowledge will frequently be subjective and personal. The subject, by winning or

Schroeder, *Four Discourses*, *supra* note 71, at 84-85.

¹³⁴ Schroeder, *Four Discourses*, *supra* note 71, at 84-85.

¹³⁵ *Id.* at 95.

losing her case, by successfully or unsuccessfully engaging in a transaction, knows or changes her relationship to the law. Sometimes the understanding is intersubjective in that the doctrinal or speculative scholar might throw new light on a legal problem that enlightens not only the scholar herself but other practitioners or scholars. Sometimes, if the doctrinal or speculative scholarship leads to a conclusion that the laws effect on the subjects subjected to the law is unjust or even unintended, this results in a call to change the law. Sometimes this new understanding actually results in a change in the law—as when litigation invalidates a law or leads to a new interpretation of the law.

D. *No Rest For the Weary*

This suggests that legal practice understood as a hysteric discourse may have a more or less happy ending for the client, if not quite a cure. But what of the attorney?

As graphically illustrated by the discourse matrix, hidden beneath the agent of each discourse is the truth of that agent. In legal practice, the attorney is the agent who stands in the position of the split suffering subject-client. Her truth, however, is the *objet petit a*—the object cause of desire itself.¹³⁶

Why is this so? An attorney's job is precisely to help her client solve his problem. The truth of the lawyer's speech is her client's pain. The practicing attorney, speaking from the position of the split subject, is nothing but the embodiment of the client's desire and, therefore, the very personification of her client's resentment. The practice of law is always, by definition, goal oriented. Consequently, the attorney can not forswear desire in favor of drive and still perform her duties as an attorney. For an attorney to seek a cure would be to commit malpractice. Consequently, a Nietzschean ethic based on the idea of the eternal recurrence is inappropriate for the lawyer. The ethic of the attorney is the ethic of psychoanalysis: do not give ground relative to your desire.¹³⁷ Drive is, alas, nothing but the giving of ground.

Of course that does not mean that a lot of lawyers—persons schooled in the law—do not give up on desire and give in to drive as an empirical matter. The lucky ones achieve idiotic enjoyment by circling endlessly in repetitive activity for the pure sake of the

¹³⁶ *Id.* at 84.

¹³⁷ "I propose then that, from an analytical point of view, the only thing of which one can be guilty is of having given ground relative to one's desire." LACAN, SEMINAR VII, *supra* note 61, at 319.

activity itself, with no hope of achieving a goal in the real world. This activity is called "legal scholarship," and the cured attorney a "law professor." Which probably explains why we are here today—and shall always return—studying Nietzsche.